

# HOUSE BILL No. 1551

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 36-4-3.

**Synopsis:** Annexation. Requires that a municipality's annexation fiscal plan must include any charges or fees related to economic development projects within the territory to be annexed with an explanation as to how those fees or charges will be imposed on property owners. Provides that an annexation ordinance may include terms and conditions establishing equitable provisions for economic development in the annexed territory. Provides that if an ordinance contains terms and conditions establishing equitable provisions for economic development of the territory, two members must be appointed to the municipal advisory board who: (1) own real property within the annexed territory; and (2) develop property or are an economic development official within the annexed territory. Provides that landowners may establish at the remonstrance hearing that the annexation will result in additional or duplicative costs (instead of that the annexation will have a significant financial impact on the residents or owners of land) in establishing the conditions required for the court to order an annexation not to take place.

**Effective:** July 1, 2009.

**Stevenson**

January 16, 2009, read first time and referred to Committee on Local Government.

C  
o  
p  
y



Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## HOUSE BILL No. 1551

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 36-4-3-2.2 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2.2. (a) This section  
3 does not apply to an annexation under section 4(a)(2), 4(a)(3), 4(b),  
4 4(h), or 4.1 of this chapter or an annexation described in section 5.1 of  
5 this chapter.  
6 (b) Before a municipality may annex territory, the municipality shall  
7 provide written notice of the hearing required under section 2.1 of this  
8 chapter. Except as provided in subsection (e), the notice must be sent  
9 by certified mail at least sixty (60) days before the date of the hearing  
10 to each owner of real property, as shown on the county auditor's current  
11 tax list, whose real property is located within the territory proposed to  
12 be annexed.  
13 (c) The notice required by this section must include the following:  
14 (1) A legal description of the real property proposed to be  
15 annexed.  
16 (2) The date, time, location, and subject of the hearing.  
17 (3) A map showing the current municipal boundaries and the



C  
o  
p  
y

proposed municipal boundaries.

(4) Current zoning classifications for the area proposed to be annexed and any proposed zoning changes for the area proposed to be annexed.

(5) A detailed summary of the fiscal plan described in section 13 of this chapter, **including fees related to development of the area proposed to be annexed.**

(6) The location where the public may inspect and copy the fiscal plan.

(7) A statement that the municipality will provide a copy of the fiscal plan after the fiscal plan is adopted immediately to any landowner in the annexed territory who requests a copy.

(8) The name and telephone number of a representative of the municipality who may be contacted for further information.

(d) If the municipality complies with this section, the notice is not invalidated if the owner does not receive the notice.

(e) This subsection applies to an annexation under section 3 or 4 of this chapter in which all property owners within the area to be annexed provide written consent to the annexation. The written notice described in this section must be sent by certified mail not later than twenty (20) days before the date of the hearing to each owner of real property, as shown on the county auditor's current tax list, whose real property is located within the territory proposed to be annexed.

SECTION 2. IC 36-4-3-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) This section does not apply to an ordinance adopted under section 5 or 5.1 of this chapter.

(b) An ordinance adopted under section 3 or 4 of this chapter must include terms and conditions fairly calculated to make the annexation equitable to the property owners and residents of the municipality and the annexed territory. The terms and conditions may include:

(1) postponing the effective date of the annexation for not more than three (3) years; and

(2) establishing equitable provisions for the future management, **economic development**, and improvement of the annexed territory and for the rendering of needed services.

(c) This subsection applies to territory sought to be annexed that meets all of the following requirements:

(1) The resident population density of the territory is at least three (3) persons per acre.

(2) The territory is subdivided or is parceled through separate ownerships into lots or parcels such that at least sixty percent (60%) of the total number of lots and parcels are not more than

C  
o  
p  
y



one (1) acre.

This subsection does not apply to an ordinance annexing territory described in section 4(a)(2), 4(a)(3), 4(b), or 4(h) of this chapter. The ordinance must include terms and conditions impounding in a special fund all of the municipal property taxes imposed on the annexed territory after the annexation takes effect that are not used to meet the basic services described in section 13(d)(4) and 13(d)(5) of this chapter for a period of at least three (3) years. The impounded property taxes must be used to provide additional services that were not specified in the plan of annexation. The impounded property taxes in the fund shall be expended as set forth in this section, not later than five (5) years after the annexation becomes effective.

SECTION 3. IC 36-4-3-8.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8.1. (a) An advisory board shall be appointed to advise the municipality on the provision of services to the annexed territory that are paid for with the municipal property taxes impounded in a special fund under section 8 of this chapter.

(b) An advisory board shall be appointed not later than ninety (90) days after an annexation becomes effective by the filing prescribed under section 22 of this chapter.

(c) An advisory board consists of the following ~~seven (7)~~ members:

(1) The township trustee of the township with the largest number of residents living within the annexed territory.

(2) One (1) member of the county fiscal body representing the district with the largest number of residents living within the annexed territory.

(3) One (1) member who is:

(A) the municipal engineer if the annexing municipality has a municipal engineer; or

(B) a licensed professional engineer appointed by the municipal executive if the municipality does not have a municipal engineer.

(4) Two (2) citizen members appointed by the municipal executive who:

(A) own real property within; and

(B) reside within;

the annexed territory.

(5) Two (2) citizen members appointed by the county executive who:

(A) own real property within; and

(B) reside within;

C  
o  
p  
y



the annexed territory.

**(6) If an ordinance contains terms and conditions establishing equitable provisions for economic development of the annexed territory, two (2) members appointed by the county executive who:**

**(A) own real property within; and**

**(B) develop property or are an economic development official within the annexed territory.**

**(d) Except as provided in subsection (e), four (4) members of the board constitute a quorum. An affirmative vote of four (4) members is required for the board to take action.**

**(e) If two (2) members are appointed under subsection (c)(6), five (5) members of the board constitute a quorum. An affirmative vote of five (5) members is required for the board to take action.**

~~(e)~~ **(f)** A member of the board may not receive a salary. A member may receive reimbursement for necessary expenses, but only when those necessary expenses are incurred in the performance of the member's respective duties.

~~(f)~~ **(g)** A vacancy on the board shall be filled by the appointing authority.

~~(g)~~ **(h)** The board shall serve for not longer than the date all municipal property taxes impounded in the fund are expended.

SECTION 4. IC 36-4-3-13, AS AMENDED BY P.L.111-2005, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 13. (a) Except as provided in subsections (e) and (g), at the hearing under section 12 of this chapter, the court shall order a proposed annexation to take place if the following requirements are met:

(1) The requirements of either subsection (b) or (c).

(2) The requirements of subsection (d).

(b) The requirements of this subsection are met if the evidence establishes the following:

(1) That the territory sought to be annexed is contiguous to the municipality.

(2) One (1) of the following:

(A) The resident population density of the territory sought to be annexed is at least three (3) persons per acre.

(B) Sixty percent (60%) of the territory is subdivided.

(C) The territory is zoned for commercial, business, or industrial uses.

(c) The requirements of this subsection are met if the evidence establishes the following:

C  
o  
p  
y



(1) That the territory sought to be annexed is contiguous to the municipality as required by section 1.5 of this chapter, except that at least one-fourth (1/4), instead of one-eighth (1/8), of the aggregate external boundaries of the territory sought to be annexed must coincide with the boundaries of the municipality.

(2) That the territory sought to be annexed is needed and can be used by the municipality for its development in the reasonably near future.

(d) The requirements of this subsection are met if the evidence establishes that the municipality has developed and adopted a written fiscal plan and has established a definite policy, by resolution of the legislative body as set forth in section 3.1 of this chapter. The fiscal plan must show the following:

(1) The cost estimates of planned services to be furnished to the territory to be annexed. The plan must present itemized estimated costs for each municipal department or agency.

(2) The method or methods of financing the planned services. The plan must explain how specific and detailed expenses will be funded and must indicate the taxes, grants, and other funding to be used.

(3) The plan for the organization and extension of services. The plan must detail the specific services that will be provided and the dates the services will begin.

(4) That planned services of a noncapital nature, including police protection, fire protection, street and road maintenance, and other noncapital services normally provided within the corporate boundaries, will be provided to the annexed territory within one (1) year after the effective date of annexation and that they will be provided in a manner equivalent in standard and scope to those noncapital services provided to areas within the corporate boundaries regardless of similar topography, patterns of land use, and population density.

(5) That services of a capital improvement nature, including street construction, street lighting, sewer facilities, water facilities, and stormwater drainage facilities, will be provided to the annexed territory within three (3) years after the effective date of the annexation in the same manner as those services are provided to areas within the corporate boundaries, regardless of similar topography, patterns of land use, and population density, and in a manner consistent with federal, state, and local laws, procedures, and planning criteria.

**(6) Any additional charges, assessments, or fees, or changes to**

C  
o  
p  
y



existing charges, assessments, or fees related to economic development projects within the territory to be annexed. The plan must specify the amounts of charges, assessments, or fees related to economic development projects and explain how those charges, assessments, or fees will be imposed on property owners.

(e) At the hearing under section 12 of this chapter, the court shall do the following:

(1) Consider evidence on the conditions listed in subdivision (2).

(2) Order a proposed annexation not to take place if the court finds that all of the conditions set forth in clauses (A) through (D) and, if applicable, clause (E) exist in the territory proposed to be annexed:

(A) The following services are adequately furnished by a provider other than the municipality seeking the annexation:

(i) Police and fire protection.

(ii) Street and road maintenance.

(B) The annexation will ~~have a significant financial impact on the residents or owners of land.~~ **result in additional or duplicative costs on the residents or owners of land.**

(C) The annexation is not in the best interests of the owners of land in the territory proposed to be annexed as set forth in subsection (f).

(D) One (1) of the following opposes the annexation:

(i) At least sixty-five percent (65%) of the owners of land in the territory proposed to be annexed.

(ii) The owners of more than seventy-five percent (75%) in assessed valuation of the land in the territory proposed to be annexed.

Evidence of opposition may be expressed by any owner of land in the territory proposed to be annexed.

(E) This clause applies only to an annexation in which eighty percent (80%) of the boundary of the territory proposed to be annexed is contiguous to the municipality and the territory consists of not more than one hundred (100) parcels. At least seventy-five percent (75%) of the owners of land in the territory proposed to be annexed oppose the annexation as determined under section 11(b) of this chapter.

(f) The municipality under subsection (e)(2)(C) bears the burden of proving that the annexation is in the best interests of the owners of land in the territory proposed to be annexed. In determining this issue, the court may consider whether the municipality has extended sewer or

C  
o  
p  
y



water services to the entire territory to be annexed:

- (1) within the three (3) years preceding the date of the introduction of the annexation ordinance; or
- (2) under a contract in lieu of annexation entered into under IC 36-4-3-21.

The court may not consider the provision of water services as a result of an order by the Indiana utility regulatory commission to constitute the provision of water services to the territory to be annexed.

(g) This subsection applies only to cities located in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000). However, this subsection does not apply if on April 1, 1993, the entire boundary of the territory that is proposed to be annexed was contiguous to territory that was within the boundaries of one (1) or more municipalities. At the hearing under section 12 of this chapter, the court shall do the following:

- (1) Consider evidence on the conditions listed in subdivision (2).
- (2) Order a proposed annexation not to take place if the court finds that all of the following conditions exist in the territory proposed to be annexed:

- (A) The following services are adequately furnished by a provider other than the municipality seeking the annexation:
  - (i) Police and fire protection.
  - (ii) Street and road maintenance.

(B) The annexation will ~~have a significant financial impact on the residents or owners of land.~~ **result in additional or duplicative costs on the residents or owners of land.**

(C) One (1) of the following opposes the annexation:

- (i) A majority of the owners of land in the territory proposed to be annexed.
- (ii) The owners of more than seventy-five percent (75%) in assessed valuation of the land in the territory proposed to be annexed.

Evidence of opposition may be expressed by any owner of land in the territory proposed to be annexed.

(h) The most recent:

- (1) federal decennial census;
- (2) federal special census;
- (3) special tabulation; or
- (4) corrected population count;

shall be used as evidence of resident population density for purposes of subsection (b)(2)(A), but this evidence may be rebutted by other evidence of population density.

C  
o  
p  
y





1       SECTION 5. [EFFECTIVE JULY 1, 2009] **This act applies to an**  
2       **annexation for which an annexation ordinance is adopted after**  
3       **June 30, 2009.**

**C**  
**O**  
**P**  
**Y**

